

FINDINGS, CONCLUSIONS AND DECISION  
OF THE CITY COUNCIL OF THE CITY OF SEATTLE

In the matter of the Petition of	)	Clerk File (C.F.) 312973
	)	
Midtown Limited Partnership	)	DPD Project 3005931
	)	
To rezone land located at 2301 East Union Street from	)	FINDINGS, CONCLUSIONS AND
Neighborhood Commercial 2 with a 40 foot height	)	DECISION
limit (NC2-40) and Neighborhood Commercial 2 with	)	
a 40 foot height limit and pedestrian zone designation	)	
(NC2P-40) to Neighborhood Commercial 2 with a 65	)	
foot height limit and pedestrian zone designation	)	
(NC2P-65), and	)	
	)	
The Appeal by	)	
	)	
MidTown Limited Partnership	)	
	)	
Of a Recommendation by the City Hearing Examiner	)	
on the rezoné petition.	)	
	)	

**Introduction**

This matter involves the petition of MidTown Limited Partnership (the Applicant) to rezone a site located at 2301 East Union Street (the Property) from Neighborhood Commercial 2 with a 40 foot height limit (NC2-40) and Neighborhood Commercial 2 with a 40 foot height limit and pedestrian zone designation (NC2P-40) to Neighborhood Commercial 2 with a 65 foot height limit and pedestrian zone designation (NC2P-65).

On November 7, 2013, the Director of the Department of Planning and Development (DPD) recommended approval of the proposed rezoné. DPD also issued a Determination of Non-Significance under the State Environmental Policy Act (SEPA).

The Hearing Examiner held an open record hearing on the rezoné recommendation on December 9, 2013. On December 18, 2013, the Hearing Examiner recommended that the Council deny the rezoné petition. On December 30, 2013, the Applicant appealed the Hearing Examiner's recommendation to the Council. On February 18, 2014, the Land Use Review Committee of the Central Area Neighborhoods

District Council moved to intervene in the matter, and on March 11, 2014, Councilmember Mike O'Brien, chair of the Planning, Land Use, and Sustainability (PLUS) Committee, granted the motion to intervene. In meetings on December 16, 2014, and January 23, 2015, the PLUS Committee heard oral argument and made a recommendation to the Council.

#### **Findings of Fact**

The Council adopts the Hearing Examiner's Findings of Fact as stated in the Findings and Recommendation of the Hearing Examiner dated December 18, 2013.

#### **Conclusions**

The Council adopts the Hearing Examiner's Conclusions as stated in the Findings and Recommendation of the Hearing Examiner dated December 18, 2013.

The Council applies a substantial evidence standard of review when reviewing the Hearing Examiner's recommendation. Seattle Municipal Code (SMC) 23.76.056.A. The Council concludes that the Hearing Examiner's recommendation is supported by substantial evidence.

The appellant bears the burden of proving that the Hearing Examiner's recommendation should be rejected or modified. SMC 23.76.056.A. The Council concludes that the appellant did not prove that the Hearing Examiner's recommendation should be rejected or modified.

#### **Decision**

The Hearing Examiner's recommendation to deny the rezone is affirmed. The rezone is denied without prejudice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
City Council President

**FINDINGS AND RECOMMENDATION  
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Application of

**CF 312973**

**HUGH BANGASSER, for MidTown Limited  
Partnership**

for a rezone of property addressed  
as 2301 E. Union Street

DPD Project No.  
3005931

**Introduction**

The applicant, Hugh Bangasser, seeks a rezone of property addressed as 2301 E. Union Street, from NC2-40 and NC2P-40, to NC2-65. The Director of the Department of Planning and Development (DPD) recommends approval.

The public hearing on this application was held on December 9, 2013, before the undersigned Deputy Hearing Examiner. The Director's SEPA determination on the proposal was not appealed. Represented at the hearing were the Director, by Michael Dorsey, Senior Land Use Planner; and the applicant, Hugh Bangasser, by G. Richard Hill, attorney at law. The record was held open after the hearing through close of business on December 9, 2013, for receipt of public comments and was also held open for purposes of the Examiner's inspection of the site on December 15, 2013.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code ("SMC" or "Code"), as amended, unless otherwise indicated. After due consideration of the evidence elicited during the hearing, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this application.

**Findings of Fact**

**Site and Vicinity**

1. The site, also known as the "MidTown Center" property, is addressed as 2301 E. Union Street and is in the Central District. The site is the entire block which is bounded by 23<sup>rd</sup> Avenue to the west, 24<sup>th</sup> Avenue to the east, E. Union Street to the north, and E. Spring Street to the south.
2. The site is approximately 106,289 square feet in size, and consists of nine tax parcels. Five of the parcels are developed with structures, while the remaining four consist of surface parking areas.
3. The site is zoned Neighborhood Commercial 2 (NC2) and NC2-Pedestrian (NC2P) with a 40-foot height limit, as shown on Exhibit 1. Zoning in the vicinity is

shown at Ex. 2. Zoning to the north across E. Union is NC2-40, zoning to the south across E. Spring Street is SF 5000; zoning to the west across 23<sup>rd</sup> Avenue, is NC2-40 and NC2P-65; and zoning to the east across 24<sup>th</sup> Avenue is SF 5000, NC2-40 and LR2. The zoning map shows the area of NC2 and LR zones which run along E. Union Street near this location, with SF 5000 zoning surrounding these areas. The site and surrounding neighborhood are within the 23<sup>rd</sup> Avenue@South Jackson-Union Residential Urban Village (23<sup>rd</sup> RUV). The most recent growth targets for this RUV which have been adopted in the Comprehensive Plan are from 2005, and set a growth target of 650 households and a density target of nine households per acre by 2024.

4. 23<sup>rd</sup> Avenue and E. Union are designated as principal and minor arterials, respectively, at this location.

5. Development on the site consists of the MidTown Center, which has housed a state liquor store, a US Postal Service branch, and other tenants, including Earl's Cuts & Styles, which has been a tenant at this site for over 21 years. Businesses in the vicinity of the site include small retail businesses. Across 24<sup>th</sup> Avenue from the site, as well south of the site across E. Spring Street, are single homes which are part of the larger SF 5000 zones.

6. The Bangasser family has owned this property since 1941. The applicant, Mr. Bangasser, and his family, have a long history of civic activism in this neighborhood. During the family's ownership of the site, businesses have come and gone from the area. Last July, the Washington State Liquor Control Board closed its state run liquor store on the site, and in January 2013, the US Postal Service notified the property owner that it will be terminating its tenancy at the MidTown site. The intersection of 23<sup>rd</sup> and E. Union has seen a number of businesses close or leave during the past decades. The Key Bank across the street from the site has closed.

7. In 2008, a contract rezone from NC2P-40 to NC2P-65 was granted for a site addressed as 2203 E. Union, located west across 23<sup>rd</sup> Avenue from the subject site. The 16,185-square foot parcel was proposed to be developed with mixed-used project that had been granted design review approval. The Hearing Examiner's recommendation for this contract rezone noted that the 2203 E. Union site was surrounded on three sides by rights-of-way that would buffer property zoned NC2-40 from it and that this would create a gradual transition in height. The Examiner's recommendation also noted that the project's design responded appropriately to the single family zone and development to the southwest of the site; *In the Matter of the Application of Jim Mueller, CF 308565*.

8. The 2203 E. Union site sat idle for several years following the rezone, and some of the public comments referred to the property as an eyesore. However, other comments at the public hearing suggested that development of the site is moving forward.

9. The applicant proposes to rezone the block to NC2P-65. The original rezone application proposed to rezone the property to NC3-65, but the property owner revised

his request after submission of the application and now seeks only to change the height limit to 65 feet. The applicant asserts that a rezone to a 65-foot height limit would encourage economic redevelopment of the 23<sup>rd</sup> and Union business core, by accommodating two additional residential floors on the site to allow "for a more vital and economically sustainable neighborhood" which would mirror "the recent similar site specific rezone on the parcel directly west across 23<sup>rd</sup> Avenue at 2203 East Union." Ex. 13, page 1.

10. The applicant has indicated that it expects that projects developed at this site would go through design review. However, the applicant/property owner is not a developer, and does not plan to develop the property. Presumably the property would be transferred to others who would develop the site. No project application has been submitted to DPD for the site.

#### Zoning history

11. The Central Area Action Plan II (CAAPII) was adopted by the City Council in 1998 as the Central Area's Neighborhood Plan. In 2005, additional neighborhood policies for the Central Area were adopted as part of the Comprehensive Plan update. The Director's analysis, at pages 6-8, lists goals and policies that address 23<sup>rd</sup> and Union and the Central Area in general.

CA-G6 Distinct but mutually supportive primary business districts along the 23rd Avenue Corridor:

- 23rd and Madison Node - Destination/Entertainment Center: the Central Area's northern commercial anchor.
- 23rd and Jackson Node - Shopping Center: the Central Area's shopping focal point, and a true "urban village."
- 23rd and Union Node - Business/Restaurant Center: A small scale commercial hub serving the neighborhood, providing a range of residential housing types

CA-P28 Encourage the preservation and conversion of homes south of Union on 23rd to live workstructures to increase the viability of the existing housing stock and enhance the pedestrian feel of 23rd Avenue

12. Resolution 31458, adopted by the City Council in January 2013, identifies amendments to the Comprehensive Plan to be considered in 2014, including amendments to the Central Area Neighborhood Plan: *"Amend the Land Use Map and goals and policies for this neighborhood plan to update the neighborhood's goals and policies to reflect the current aspirations of the neighborhood's residents and business owners, including potential Future Land Use map and zoning changes at the key nodes of 23<sup>rd</sup> at East Union Street, East Cherry Street, and East Jackson Street."*

13. Since early 2013, DPD and Department of Neighborhoods have been engaged in a neighborhood planning process for the 23<sup>rd</sup> RUV. A draft set of recommendations were issued in September 2013 for public review. It is not known exactly when draft Action Plan would be acted upon by City Council, although commenters at hearing suggested that this would happen sometime in 2014. The draft Action Plan identifies the intersections at 23<sup>rd</sup> and Union, 23<sup>rd</sup> and Cherry, and 23<sup>rd</sup> and Jackson as key nodes and identifies design proposals for each of them. The draft "Union Urban Design Proposal" is shown at Ex. 8, and shows NC2P-65 for properties surrounding the intersection of 23<sup>rd</sup> and Union, including the subject site. Portions of the subject site along E. Spring Street and most of 24<sup>th</sup> Avenue, are denoted as "multi-family in transition zone consider modulating height." The draft plan states that it "recommends a height limit of 65' around the intersection [at 23<sup>rd</sup> and Union] to create a unified identity at this important intersection with transitions to lower zones at the edges."

#### DPD review

14. DPD reviewed the proposed rezone, and recommends approval. No conditions were recommended except that DPD's report recommends that *"Should a broader, area-wide rezone of the 23<sup>rd</sup> Avenue and E. Union Street intersection be contemplated by City Council in the near future, and should that broader rezone be made subject to an 'incentive zoning suffix' complying with subchapter 23.58A of the Land Use Code, at such a time the subject site should be made subject to the same suffix."* Ex. 10, page 16.

15. DPD issued a Determination of Nonsignificance (DNS) for the proposed rezone. The DNS was not appealed.

#### Public Comments

16. DPD and the Hearing Examiner received comments supporting and opposing the proposed rezone. Some of the comments expressed support for the rezone as a means of encouraging economic revitalization of an area that has seen businesses depart, and as means of encouraging denser, pedestrian-friendly development. The applicant and other commenters favor the rezone as furthering a mixed-use, pedestrian-friendly residential urban village. Some who commented expressed a sense of urgency, and a desire to see some tangible step taken in the direction of higher density, even if the rezone is not associated with any project proposal at this time.

17. Other comments opposed the increased height. Public comments also expressed concerns that this site-specific rezone was being proposed in advance of the legislative adoption of the 23<sup>rd</sup> Avenue Union-Cherry-Jackson Action Plan. Some comments did not object to the rezone, but expressed the desire to retain current businesses and the support of businesses owned by persons of color.

#### Codes

18. SMC 23.34.007 provides that *"In evaluating proposed rezones, the provisions of this chapter shall be weighed and balanced together to determine which zone or height designation best meets those provisions."* The section also states that *"No single criterion or group of criteria shall be applied as an absolute requirement or test of the appropriateness of a zone designation, nor is there a hierarchy or priority of rezone considerations, unless a provision indicates the intent to constitute a requirement or sole criterion."*

19. SMC 23.34.008 states the general rezone criteria. The criteria address the zoned capacity and density for urban villages; the match between the zone criteria and area characteristics; the zoning history and precedential effect of the rezone; neighborhood plans that apply; zoning principles that address relative intensities of zones, buffers, boundaries; impacts of the rezone, both positive and negative; any relevant changed circumstances; the presence of overlay districts or critical areas, and whether the area is within an incentive zoning suffix.

20. SMC 23.34.009 addresses the designation of height limits in a commercial or industrial zone. Under this section, the factors to be considered are the function of the zone; the topography of the area and its surroundings; height and scale of the area; compatibility with the surrounding area; and neighborhood plans.

#### Conclusions

1. The Hearing Examiner has jurisdiction to make a recommendation on the proposed rezone to City Council, pursuant to SMC 23.76.052.

2. Under SMC 23.34.007, the rezone provisions are to be weighed and balanced to determine the appropriate zone designation. No single criterion or group of criteria are to be applied as an absolute requirement or test of appropriateness of a zone designation, nor is there a hierarchy or priority of rezone considerations unless specified by the Code.

3. The subject site is in the 23<sup>rd</sup> and Union-Jackson Residential Urban Village, and is therefore subject to the provisions of Chapter 23.34 SMC that apply to urban centers and villages. The proposal is not a shoreline environment redesignation and is not a correction of a mapping area, so the provisions of SMC 23.34.007 which apply to such actions, do not apply to this application.

#### General rezone criteria

4. Effect on zoned capacity. SMC 23.34.008.A requires that, within the urban center or urban village, the zoned capacity taken as a whole shall be no less than 125 percent of the applicable adopted growth target, and within the density ranges established in the Comprehensive Plan. The adopted growth targets in the current Comprehensive Plan are

for 650 additional households, and the target density of nine households per acre by 2024. The proposed rezone would not reduce the zoned capacity below 125% of the Plan growth target, and is within the density ranges established in the Plan. The proposal would therefore meet these standards.

5. Match between zone criteria and area characteristics. The most appropriate zone designation is that for which the provisions for designation of the zone type and the locational criteria for the specific zone, match the characteristics of the area to be rezoned better than any other designation. In this case, the NC2 designation would not change, except that all NC2 portions not currently having a P-suffix would be designated as NC2P. The NC2P zone criteria match the characteristics of the area better than any other zone designation. The criteria for designation of commercial zones and NC2 zones, as well as the criteria related to pedestrian designation, are consistent with this proposal as well, as described in DPD's report at page 14. The proposed change to the height designation is discussed below.

6. Zoning history and precedential effect. Under this criterion, previous and potential zoning changes, both in and around the proposal site, are to be examined. The site has been zoned NC2-40 since the City's commercial zoning code (Chapter 23.47) was adopted. The 2203 East Union Street site, west across 23<sup>rd</sup> Avenue, was rezoned to NC2-65 in 2008, as a result of a contract rezone, as noted above. The history of the zoning at this site shows that it has long been zoned NC2-40. Potential zoning changes of primary consideration in this case are those that would be driven by the 23<sup>rd</sup> Avenue Union-Cherry-Jackson Action Plan, which has been drafted but which has not yet been adopted by City Council. The Plan designates the site and other properties at this intersection as NC2P-65 with transitions to lower zones at the edges. Both previous and potential zoning changes are generally consistent with a 65-foot height limit. As for precedential effect, while difficult to predict, rezoning this property to a 65-foot height limit might have encourage rezoning of other NC2-40 properties along the 23<sup>rd</sup> Avenue corridor since the properties may have similar potential for redevelopment.

7. Neighborhood Plans. The Code rezone criteria direct that adopted neighborhood plans be considered. The CAAP II was adopted in 1998. The 23<sup>rd</sup> Avenue Action Plan, as noted above, has not yet been adopted as part of the Comprehensive Plan. The 1998 CAAP II includes goals and policies that generally support a mixture of commercial, retail and residential development in higher densities at this location; Director's report at pages 6-8. The proposed Action Plan also identifies this site as primarily being at a 65-foot height limit with appropriate transitions to the lower density zones adjacent to the NC2 zones. It is not clear how the 65-foot height limit would affect the relationship of the business districts and nodes along the 23<sup>rd</sup> Avenue Corridor (e.g., as referenced in CA-G5 or CA-G6) in the absence of a specified project, but there is nothing about the 65-foot height limit that would inherently conflict with these goals. The proposal for a 65-foot height limit is generally consistent with the adopted Plans.



8. Zoning principles. Zoning principles are to be considered. The impact of more intensive zones on less intensive zones or industrial and commercial zones on other zones shall be minimized by the use of transition or buffers, if possible. A gradual transition between zoning categories, including height limits, is preferred.

9. The site is surrounded on all sides by streets. There are no other physical buffers between the site, which occupies an entire block, and surrounding areas, including the SF 5000 zones south of E. Spring Street and east of 24<sup>th</sup> Avenue. However, in the Mueller rezone action for the nearby property at 2203 E. Union, the rights-of-way were deemed adequate buffering between that site and NC2-40 properties. The same can be said here; the streets provide sufficient separation between other NC2 properties. In the 2203 E. Union rezone, the project's design was examined and was found to provide appropriate transition to the SF 5000 properties. No project has yet been proposed for this site, so there is no design that identifies features, e.g., ground level or upper level setbacks, modulation or other design components that might provide appropriate transition where the property faces the SF 5000 properties across 24<sup>th</sup> Avenue or Spring Street. The proposed height change would not be consistent with the zoning principles addressing impacts and buffers zones.

10. The proposed zoning boundaries are the existing block boundaries. Although one of the zoning principles establishes a preference for commercial uses to face each other and away from residential area, the existing NC2-40 zone already faces the adjacent SF 5000 zones across 24<sup>th</sup> Avenue and E. Spring Street. The proposal does not alter the existing location of commercial and residential zones and is consistent with this zoning principle. Another zoning principle calls for height limits greater than 40 feet to be limited to urban villages; the rezone site is within an urban village, so the proposed 65-foot height limit greater would be consistent with this principle.

11. Impact evaluation. Under this criterion, negative and positive impacts on the site and its surroundings are to be considered. The proposal would create the opportunity for increased housing density at the site, but additional housing, including low-income housing, is not proposed at this time. Impacts on public services are not a factor in this rezone. As to environmental factors, DPD issued a DNS for the proposal, which was not appealed and is therefore final as to those impacts which were evaluated. The shadow studies comparing the 40-foot height and 65-foot height limits indicate increased shadow impacts on the properties to the south and east.

12. Pedestrian safety is not directly affected by this rezone, and the area is currently developed with sidewalks, street lights and crosswalks that would serve new uses at this site. The proposal includes a "pedestrian" designation on all lots facing Union and 23<sup>rd</sup> Avenue, and future site development would need to respond to this designation.

13. Manufacturing activity, architectural/historic values, and shoreline views, access, recreation, and navigation, are not factors relevant to this application.

14. Employment activity may be positively affected, depending on development of the site. Several public comments expressed support for the 65-foot height limit on this site as a way to address the area's need for economic development and revitalization.

15. Utility and service capacities. Street access, street capacity, transit service, and parking capacity do not appear to be factors in the rezone. Future development at the site may be required to provide improvements to address project-specific impacts, or to contribute to facility upgrades, e.g., Seattle Public Utilities upgrades regarding area-wide sewer, water and flooding issues.

16. Changed circumstances. Changed circumstances are to be taken into account, but are not required to demonstrate whether a proposed rezone is appropriate. The Director's report concludes that the reduction of the US Postal Service presence at the property is part of a series of business closures in the area which constitute changing circumstances favoring this rezone. It is not clear that the loss of tenants at a particular site, or even within a larger area, constitutes changed circumstances under SMC 23.34.008. However, changed circumstances are not necessary in order to show that a rezone is appropriate, so the proposal does not conflict with this criterion.

17. Overlay districts and environmentally critical areas. The site is not located within an overlay district and does not contain any environmentally critical areas.

18. Incentive provisions. The site is not located within a zone with an incentive zoning suffix.

#### **Height Limits**

19. Under SMC 23.34.009, several factors are to be examined in a rezone to a different height limit. The proposed height limits are to be consistent with the type and scale of development intended for the zone classification. A 65-foot height limit would be consistent with the type and scale of development intended for the NC2 zone classification. The NC2 zone is intended to encourage a pedestrian-oriented shopping area together and other compatible uses such as housing or offices, and is appropriate in areas that are primary business districts in residential urban villages.

20. The topography of the area and its surroundings are also to be considered. The site is relatively flat; the surrounding area is also relatively flat, although there are some small changes in elevation on the site and between the site and its surroundings; Ex. 17. There appear to be no major topographic conditions that would lessen or increase the impacts of a height increase on the surrounding areas.

21. The height and scale of the area are to be considered, and the compatibility of the proposed height limit with existing development is to be considered, particularly where the existing development is a good measure of the area's development potential. The existing zoning along 23<sup>rd</sup> Avenue near the site is for a 40-foot height limit, except for the

site which was rezoned in 2008 to 65 feet. The existing commercial development in this area is older, and generally not built to the 40-foot height limit; there appear to be a number of vacant spaces. It appears therefore not to be a good measure of the area's development potential. The existing single family development in the area is older as well, but appears representative of SF 5000 residential development.

22. Compatibility with surrounding area. This criterion calls for height limits to be "compatible with actual and zoned heights in surroundings areas." It also provides that a "gradual transition in height and scale and level of activity between zones shall be provided unless major physical buffers...are present."

23. The proposed 65-foot height limit would not match the existing height in the surrounding area, but depending on what kind of development occurs on this site, the height limit could be compatible both with actual and zoned heights in the surrounding area. Similarly, although no major physical buffers are present, the design of future development at the site could provide gradual transition in height and scale and level of activity between the commercial and residential zones. But at this time, as noted by DPD, there are a number of different development scenarios that could occur on this large site, including individual development on the separate lots within the site; Ex. 10, p. 15. Even if it is presumed that design review will apply to future development of this site, it is not known what the outcome of that process would be in terms of project design or conditions. The future compatibility of a 65-foot height limit, or the gradual transition in height, scale and activity between zones, cannot be assumed on the basis of what is in this record.

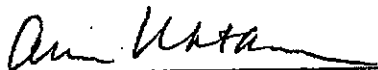
24. Neighborhood Plans. The adopted neighborhood plans do not specify future height limits. The characteristics identified in the adopted goals and plans tend to support a 65-foot height limit to encourage new mixed-used, pedestrian-friendly development. It is not clear whether the extra development capacity created by the rezone would frustrate other goals and policies in the immediate area, e.g., encouragement of business at other nodes along 23<sup>rd</sup> Avenue.

25. There are competing factors both for and against this rezone, when examined according to the Code's rezone criteria. A rezone to a 65-foot height limit is generally compatible with the adopted policies for the neighborhood, although it may not be entirely consistent with the draft Action Plan that is apparently awaiting legislative approval in 2014. However, the site's large size and potential at this time for varying development scenarios that are not defined, in combination with the absence of significant physical buffers separating it from the residential zones to the east and south, and the lack of any other conditions or project design features identifying appropriate transition to those nearby zones, are significant factors against the proposed rezone. The Examiner would therefore recommend denial of the proposal.

**Recommendation**

The Hearing Examiner recommends denial of the proposed rezone.

Entered this 18th day of December, 2013.



Anne Watanabe  
Deputy Hearing Examiner

**CONCERNING FURTHER REVIEW**

NOTE: It is the responsibility of the person seeking further review to consult appropriate Code sections to determine applicable rights and responsibilities.

Pursuant to SMC 23.76.054, any person substantially affected by a recommendation of the Hearing Examiner may submit an appeal of the Hearing Examiner's recommendation to the City Council. The appeal must be submitted within fourteen (14) calendar days following the date of the issuance of the Hearing Examiner's recommendation, and be addressed to: Seattle City Council Planning, Land Use and Sustainability Committee, c/o Seattle City Clerk, 600 Fourth Avenue, Floor 3, P.O. Box 94728. Seattle, WA 98124-4728. The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought.